IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

MFA.No. 1197 of 2000()

OPMV.79/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

.....

APPELLANT: PETITIONER:

JAYA, W/O.MANOHARAN, KUMMARA VEEDU,
WARD - 6, KODAMTHURUTH, EZHUPUNNA SOUTH.

BY ADV. SRI.C.K.ARAVINDAKSHA MENON
SRI.K.C.CHARLES
SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.PRAKASH P.GEORGE

RESPONDENTS: RESPONDENTS:

---

1. P.K.BALAKRISHNAN, S/O.RAMAN, PANACKAL VADAKKETHIL
PARAYAKKADU P.O., CHERTHALA.

2. PRASAD, PUTHENPARAMBIL, THENNADY,
CHIRAYAKOM, TAKAZHY.

3. THE UNITED INDIA INSURANCE CO. LTD., CHERTHALA.

BY ADV. SRI.P.JAYASANKAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 1197 of 2000

Dated this the 11th July, 2007.

J U D G M E N T

Heard. Admitted. Advocate Sri.P.Jayasankar appears for the 3rd respondent, Insurer. Notice to respondents 1 and 2 is dispensed with.

2. The petitioner in O.P.(M.V.)No.79/1995, on the file of the Motor Accidents Claims Tribunal, Alappuzha, is the appellant. The appellant met with an accident involving an auto rickshaw bearing Registration No.KRA 1433 on 21.7.1994, and sustained injuries. Appellant had filed this Original Petition impleading the owner, driver and insurer of the vehicle claiming an amount of Rs.92,000/= as compensation. The Tribunal found that the accident occurred due to the negligence of the driver of the auto rickshaw. It also found that the appellant is entitled to get an amount of Rs.8000/= . Challenging the quantum of compensation awarded, appellant herself has filed this appeal.

2. Immediately after the accident, appellant was taken to K.V.M. Hospital, and treated as an inpatient for one day. Next day, she was admitted in the Medical College Hospital, Kottayam, and under went treatment as an inpatient till 5.8.1994. She underwent surgery. But the records produced by her shows that she had Traumatic Diaphragmatic Hernia (left). She developed Dyspnoea with pain on the left side of chest. She had a history of Bronchite asthma. The medical evidence also shows that air entry was decreased on the left side of the chest and she was subjected to emergency Thoracotomy and repair of Diaphragmatic Hernia left side. The Tribunal awarded an amount of Rs.4000/= for pain and sufferings, Rs.1,500/= for treatment expenses, Rs.1,500/= for transport charges, and Rs.1000/= for loss of earnings. Accordingly, a total amount of Rs.8000/= alone awarded. According to the appellant, the amount awarded is highly inadequate.

3. It is true that appellant was a Bronchite asthma patient. But the evidence on record shows that due to the accident, she had to undergo Thoracotomy, and repair of Diphragmatic Hernia (left). The evidence also reveals that Trachea had been shifted to left side. The Tribunal itself found that that occurred due to the impact of

the accident. Though the accident may not be the direct cause of Hernia, there cannot be any doubt that the shifting of Trachea occurred due to the accident. The Tribunal has not awarded any compensation for the discomfort, loss of amenities etc., appellant had suffered on account of the accident. Therefore, I am of the view that at least an amount of Rs.5000/= has to be awarded on that count, in addition to the amount already awarded. I do not find any reason to modify the amount awarded on other counts.

In the result, the appeal is allowed in part. An award is passed in favour of the appellant allowing her to recover an amount of Rs.5000/= as additional compensation from the third respondent, Insurance Company, with 6% interest from the date of petition, till the date of realisation. The third respondent is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1197 of 2000

J U D G M E N T

Dated: 11th July, 2007.